IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

RCRev..No. 317 of 2007

RCA.47/2006 of VI ADDL.DISTRICT COURT, ERNAKULAM
RCP.17/2005 of III ADDL.MUNFISS COURT, ERNAKULAM (RENT CONTROL)
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REVN. PETITIONER/2ND RESPONDENT/2ND RESPONDENT

SIJU OOMMEN, S/O. UMMEN,
PROPRIETOR, SPORTS CENTRE, PRESS CLUB ROAD,
ERNAKULAM.

BY ADV. SRI.A.K.CHINNAN
SMT. SUSAL A CHINNAN

RESPONDENTS/PETITIONER/IST RESPONDENT:
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1. MRS. LEELA JOHN, W/O. LATE JOHN MATHEW,
CHOOLAKKAL HOUSE, PRESS CLUB ROAD, ERNAKULAM.

2. A.R.LAZAR, S/O. LATE ALOOKARAN RAPHAEL,
C/O. E.D. RAPHEAL, EDAPPILLY HOUSE,
KOTTAIKANA, EAST KALOOR - 682 217.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO. 317 OF 2007

Dated 10th October, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the 2nd respondent in the R.C.P. The 1st respondent is the landlord. The R.C.P for eviction of the petition schedule shop room was filed under Sections 11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965(hereinafter referred to as "the Act"). The petitioner herein, the 2nd respondent in the R.C.P filed a counter statement, denying the title of the landlord. So, it was tried as a preliminary issue under the second proviso to Section 11(1) of the Act. The Rent Controller found in favour of the tenant and the landlord was relegated to move the civil court to establish her title. The landlord appealed. The appellate authority reversed the said finding, by the judgment in R.C.A. No.47/1006. This judgment is under challenge in this revision.

2. One Mr.A.R.Joseph was the original tenant. Later, his wife Kunjathiri succeeded to his tenancy rights. The said Mr.A.R.Joseph created

a partnership with the petitioner herein. On his death Kunjathiri became the Managing Partner in the place of Mr.A.R.Joseph, the original tenant. According to the petitioner, one Smt.Chamakutty, the sister-in-law of the landlord is the real landlord. She only authorised her brother Mr.John to collect the rent and after his death the rent was being collected by his wife, the petitioner before the Rent Controller, stying herself as the landlord. The Rent Controller rightly asked her to produce the title deeds. On her failure to do that, the contention of the revision petitioner was upheld under the second proviso to Section 11(1) of the Act. But, the petitioner points out that the appellate authority wrongly reversed the said finding.

3. We notice that the appellate authority reversed the said finding, mainly relying on Ext.B1. The contents of Ext.B1 is extracted in the appellate authority's judgment, which reads as follows:

> "As per the mutual discussions for the enhancement of the monthly rent of your shop room No.40/1675, we agree to pay the monthly rent at the enhanced rate of Rs.900/- (Rupees Nine hundred only) with effect from 1st July, 1997 and fifteen percent increase on the rent in every three years."

The appellate authority also relied on Ext.B11 dated 15.1.2004 and Ext.B12 dated 22.3.2004. They are receipts evidencing payment of Rs.1190/- and Rs.3570/- respectively to the 1st respondent herein by Smt. Kunjathiri. So, the appellate authority held that Smt.Kunjathiri has accepted the 1st

respondent herein as the landlord and paid to her the rent regularly. In view of the above position, the petitioner herein, who claims rights through Kunjathiri cannot be heard to contend that the 1st respondent herein is not the landlord. We are of the view that the said finding based on Exts.B1, B11 and B12 does not suffer from any illegality, irregularity or impropriety.

4. The learned counsel for the petitioner relied on two receipts Exts,B2 and B3 issued in 1963, in favour of the original tenant Mr.A.R.Joseph. But, the appellate authority has dealt with that contention and noticed the subsequent developments, including the execution of Ext.B1. The appellate authority's view on this point is a plausible view on the facts with which we cannot interfere under Section 20 of the Act.

5. The denial of title contemplated under the second proviso to Section 11(1) of the Act is not the denial of proprietary title or paramount title, but only the denial of status as landlord. The definition of landlord in Section 2(3) of the Act reads as follows:

> "(3) 'landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant."

So, the 1st respondent herein has been accepted as the landlord for the

purposes Section 2(3) of the Act by Smt.Kunjathiri, as evident from Exts.B1, B11 and B12. Therefore, we fully agree with the finding of the appellate authority that the denial of title is not bona fide. This view taken by us is fortified by the decision of the Full Bench of this Court in **Parthakumar v. Ajith Viswanathan** [2006(2) KLT 250 (FB)]. The relevant portion of the judgment reads as follows:

> "22. What then is the title of the landlord contemplated under the second proviso to S.11(1) of the Act. Title, it is trite, is the sum total or the bundle of rights in respect of property. The paramount title of the landlord is absolutely irrelevant for the purpose of a claim under S.11. His title as the landlord alone is relevant in a dispute under S.11 of the Act. Is he the landlord of the person proceeded against? If he is, he has the requisite title to sustain the claim for eviction under S.11. He may be only a mortgagee or a lessee who had leased/sub leased the building. A denial of paramount title is, in these circumstances, irrelevant if the person proceeded against is the tenant and the person making the claim is the landlord. Proprietary title of the person claiming eviction is thus irrelevant and the denial contemplated under S.11(1) of the Act could never have been the denial of paramount, or proprietary title. The denial of paramount title may in a given case include the denial of title as landlord also. Such title as landlord alone is essential to sustain a claim for eviction under S.11(1) of the Act. All that we intend to make note is that the denial of paramount or proprietary title is irrelevant and that is not the precise denial of title contemplated under the second proviso to S.11(1) of the Act. The denial of title as landlord alone is relevant. So wherever there is a denial of the right of the landlord to claim eviction, on the ground that he is not the landlord of the person proceeded against, such denial must certainly be reckoned as denial of title of the landlord as contemplated under S.11(1) of the Act. In short, we are of

> opinion that denial of landlord – tenant relationship between the claimant/landlord so-called and the respondent/tenant so-called is the denial of title which alone is contemplated under the second proviso to S.11(1). If there is admission of such title, the Rent Control Court certainly has jurisdiction to proceed. If that is in dispute, second proviso to S.11(1) comes into play."

In view of Exts.B1, B11 and B12, the petitioner's predecessor-in-interest has admitted that the 1st respondent herein is the landlord. Therefore, in the light of the above authoritative pronouncement, the denial of title made by the tenant cannot be upheld. In other words, we hold that it was made without any bona fides. Accordingly, the appellate authority rightly allowed the appeal. In the result, the Rent Control Revision fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/